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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,756	02/13/2001	Stevan P. Vasic	7885.5	9702
21999	7590	04/10/2006		
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120			EXAMINER	
			SHEIKH, ASFAND M	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/782,756	VASIC, STEVAN P.
	Examiner Asfand M. Sheikh	Art Unit 3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02/21/2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 94-117 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 94-117 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

PLEASE TAKE NOTICE that the examiner handling this application has changed. The new examiner is Asfand M. Sheikh. The Group Art Unit number is unchanged and is still 3627.

Claims 94-117 are presented for examination. The Examiner has thoroughly reviewed the previous action and references and concludes the rejection of claims 94-117 will be maintained.

Response to Amendment

1. The affidavit filed on 21 February 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome Kravetz et al. United States Patent 6,397,196 (hereinafter Kravetz reference).

2. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Kravetz reference to either a constructive reduction to practice or an actual reduction to practice. Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant

must show evidence of facts establishing diligence. Diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application) (M.P.E.P 715.07(a)).

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Kravetz reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The affidavit and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b).

In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974).

Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.") (M.P.E.P 715.07).

4. The evidence submitted is insufficient to establish applicant's alleged actual reduction to practice of the invention in this country or a NAFTA or WTO member country before the effective date of the Kravetz reference. Proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United

States and was published under Article 21(2) of such treaty in the English language.

6. Claims 94, 95, 97, 98, 100-112, and 114-116 are rejected under 35 U.S.C. 102(e) as being anticipated by Kravetz et al. United States Patent 6,397,196 (hereinafter Kravetz).

As per claim 94, Kravetz discloses receiving from an employee an electronic request for said payroll advance (a user requests a loan); evaluating the eligibility of said employee to receive said payroll advance (col. 4, lines 20-27), wherein said evaluating step is performed substantially without human intervention (col. 4, lines 38-40, "ATM Network"); and forwarding said payroll advance to said employee (col. 4, lines 20-27), wherein said forwarding step is performed substantially without human intervention (col. 4, lines 38- 40, "ATM Network").

As per claim 95, Kravetz discloses wherein said electronic request is received via an automated teller machine and said payroll advance is forwarded to an automated teller machine (see col. 4, lines 38-40, "ATM Network").

As per claim 100, Kravetz discloses wherein said forwarding step is completed via a payroll access resource (FIG. 2; via Bank 100 and Account 225).

As per claim 101, Kravetz discloses wherein said payroll access resource is a financial resource selected from the group consisting of: a bank account (FIG. 2; via Account 225), a credit account, a secondary payroll access account, a shared amount, a trust account, a temporary account, a savings account, and a checking account.

As per claim 102, Kravetz discloses wherein the payroll access resource is an account holding party selected from the group consisting of: the employer, a bank (FIG. 2; via Bank 100), a credit union, and a third-party financial institution.

As per claim 103, Kravetz discloses wherein said evaluating step substantially determines the amount of money available through said payroll advance (col. 4, lines 28-40).

As per claim 104, Kravetz discloses wherein the amount of money available through said payroll advance is determined before said receiving step (it is inherent the amount available is determined before it is received).

As per claim 105, Kravetz discloses wherein the party controlling said evaluating step charges a transaction fee to said employee (col. 4, lines 10-11; "Interest").

As per claim 106, Kravetz discloses wherein the party controlling said forwarding step charges a transaction fee to said employee (col. 4, lines 10-11; "Interest").

As per claims 97 and 98, Kravetz fails to explicitly state when the advance is processed relative to the when wages are earned but the Examiner asserts that it is inherent that Kravetz's system allows for advances (loans) to be processed at any point in time after registration.

As per claim 109, Kravetz fails to explicitly state that the advance is divided among a plurality of future wage payments but the Examiner asserts that it is inherent that Kravetz's system allows for loans to be repaid via as many wage payments as necessary.

As per claims 107, 108, 110-112, 114, and 115, Kravetz

discloses a method of providing a payroll advance as set forth in detail above for claims 94, 95, 97, 98 and 100-106.

As per claim 116, the Examiner asserts that it is inherent that loan amount available to a user is at least partially based on a relative risk of non-payment during the application process (col. 4, lines 63-67 and col. 5, lines 1-11).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 96, 97, 98, 109, 111, and 112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kravetz et al. United States Patent 6,397,196 (hereinafter Kravetz) in view of Official Notice.

As per claim 96, the Examiner takes Official Notice that communication via the Internet and telephone was old and well known at the time of the invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kravetz with Internet or telephone communication as well known in the art, because Internet and telephone communication offer high speed and reliable communication platforms with easy accessibility.

As an alterative rejection to the 35 U.S.C. § 102 of claims 97, 98, 111 and 112 set forth above, the Examiner notes that Kravetz is silent regarding when the advance money is actually earned by the employee. Claims 97 and 111 require that the advance (loan) is processed related to wages that have been earned but not yet paid. Claims 98 and 112 are related to an advance that has not been earned. Therefore, if it is held that Kravetz fails to disclose processing advances (loans) before or after the wages are earned, then it would have been obvious to do so.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kravetz with processing the advance (loan) at any point in time compared to the employee earning the wages as well known in the art, because people need loans at various points and time and panting payroll

advances before and after the wages are earned provides greater customer service and flexibility to the employee.

As an alterative rejection to the 35 U.S.C. § 102 of claim 109 set forth above, the Examiner notes that Kravetz is silent regarding repayment of advance (loan) over a plurality of future wage payments. Therefore, if it is held that Kravetz fails to disclose repayment of advance (loan) over a plurality of future wage payments, then it would have been obvious to do so.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kravetz with advance (loan) repayment over multiple future wage payments as well known in the art, because loans may be larger than wage payments and therefore need to be paid via a plurality of wage payments. This feature will allow people to borrow more than a single wage payment.

9. Claims 99 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kravetz et al. United States Patent 6,397,196 (hereinafter Kravetz) in view of Risafi et al. United States Patent 6,473,500 (hereinafter Risafi).

As per claims 99 and 113, Kravetz fails to explicitly disclose the use of authenticating said electronic request security, Kravetz is silent.

While ATM'S generally require authentication for Risafi teaches the use of a PIN for an ATM (col. 7, lines 50-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kravetz with a PIN as taught by Risaf, because using a PIN improves security.

10. Claim 117 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kravetz et al. United States Patent 6,397,196 (hereinafter Kravetz) in view of an article by Rusty Cawley, "New Texas Capital product marries payroll, ATMs" (hereinafter Cawley) .

As per claim 117, Kravetz fails to explicitly disclose charging for employee for payroll advances before the receiving step.

Cawley teaches the use of charging nothing for first payroll advance (see page 2, lines 14-15) and \$1 to \$2 for each additional advance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kravetz with

charging for payroll advances as taught by Cawley, because charging for payroll advances helps pay the cost of the service.

11. Response to ArgumentsApplicant's arguments filed 21 February 2006 have been fully considered but they are not persuasive.

With respect to claims 94, 95, 97, 98, 100-112 and 114-116, the applicant argues, "Kravetz teaches a loan and the present application discloses a payroll advance. Because these two concepts have distinctly different underlying characteristics, Applicant respect submits that the claim set as provided herin is not anticipated by the cited reference, as Kravetz does not "teach every aspect of the claimed invention" as required by M.P.E.P 706.02." The Examiner disagrees. Kravetz does indeed teach a payroll advance (col. 4, lines 20-40). The Examiner notes, that Kravetz discloses that it is not necessary for the account to be initiated with a loan thus the account is initiated with automatic payroll deduction to accrue savings, which can be withdrawn through an automatic ATM network. Kravetz further disclose performs evaluation of eligibility to receive payroll advance by checking too see if the account is setup for payroll advance and thus if eligible forwards the

advance to the employee, without human intervention (col. 4, lines 20-27). Examiner further notes the "revolving agreement" allows for money to be deposited, via payroll advance, and withdrawn as an employee as he or she wishes and further that negative balance can be accrued which is then paid down by the ongoing payroll advance. For these reasons, the Examiner notes that the argument is not persuasive.

With respect to claims 96-99, 109, 111-113, and 117, the applicant's argument are moot with respect to response provided above.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. United States Patent 6,347,305 [Method for selecting and processing a payroll deduction plan as a payment option during electronic commerce] and United States Patent 5,604,341 [ATM as video conferencing station].

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571) 272-1466. The examiner can normally be reached on M-F 8a-4:30p.

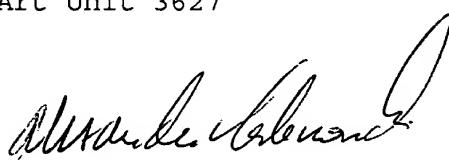
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

Asfand M Sheikh
Examiner
Art Unit 3627

ams



**ALEXANDER KALINOWSKI
SUPERVISORY PATENT EXAMINER**